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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NICK J. PUDAR

Appeal 2008-0410
Application 09/870,377
Technology Center 3600

Decided: April 30, 2008

Before: TERRY J. OWENS, HUBERT C. LORIN and
STEVEN D.A. McCARTHY, *Administrative Patent Judges.*

McCARTHY, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

1
2 The Appellant appeals under 35 U.S.C. § 134 (2002) from the final
3 rejection of claims 1-45. We have jurisdiction under 35 U.S.C. § 6(b)
4 (2002).

The claims on appeal relate to a radio system and method for delivering advertising content to an occupant of a vehicle such as an automobile. Independent claim 1 is representative of the Appellant's claims and reads as follows:

1. A method of delivering advertising content to a vehicle occupant using a vehicle radio, comprising the steps of:
receiving a radio advertisement;
storing the radio advertisement in memory;
receiving a radio broadcast stream;
monitoring the received radio broadcast stream for marker data indicative of an advertising slot within the radio broadcast stream; and
playing the radio broadcast stream using the vehicle radio and, in response to detecting the marker data, accessing the radio advertisement from memory and playing the radio advertisement in the advertising slot using the vehicle radio.

Claims 1-13, 16-19 and 21-41 stand rejected under 35 U.S.C. § 102(b) (2002) as being anticipated by Dimitriadis (U.S. Patent 5,664,948). Claims 14, 15, 20 and 42-45 stand rejected under 35 U.S.C. § 103(a) (2002) as being unpatentable over Dimitriadis in view of Hite (U.S. Patent 5,774,170).

We REVERSE the rejection of claims 1-13, 16-19 and 21-41 under section 102(b) as being anticipated by Dimitriadis. We REVERSE the rejection of claim 42 under section 103(a) as being unpatentable over Dimitriadis in view of Hite. We AFFIRM the rejection of claims 14, 15, 20 and 43-45 under section 103(a) and designate the grounds of the affirmance as new grounds of rejection. We enter NEW GROUNDS OF REJECTION

against claims 1-7, 13, 16, 17 and 21-25 under section 103(a) as being
unpatentable over Dimitriadis in view of Hite.

ISSUES

The four primary issues in this appeal are:

(1) Whether Dimitriadis discloses, or Dimitriadis and Hite suggest, using marker data in a radio broadcast stream to identify the location of an advertising slot (*see* App. Br. 10);

(2) Whether Dimitriadis discloses, or Dimitriadis and Hite suggest, inserting a radio advertisement into an advertising slot so that the advertisement is included within audio content sent to an input of a vehicle radio which is coupled to a radio broadcast receiver (*see* Reply Br. 4-5);

(3) Whether Dimitriadis and Hite suggest using advertisement data to determine which received radio advertisements to store in memory (App. Br. 13-14) or, more specifically, whether these references suggest storing selected advertisements on a recording device based on a comparison of primary selection data stored in a vehicle radio system with primary selection data included with the advertisement (App. Br. 19-20); and

(4) Whether Dimitriadis and Hite suggest selecting a stored advertisement based on secondary selection data for playback via the vehicle radio during an advertising slot (App. Br. 19-20).

FINDINGS OF FACT

The record supports the following findings of fact (“FF”) by a preponderance of the evidence.

1 1. Dimitriadis discloses a travel information device including a car
2 radio and a paging device which together collect and store advertising
3 content for later presentation. (Dimitriadis, col. 2, ll. 64-67). The travel
4 information device includes an antenna, a data radio receiver for receiving a
5 voice broadcast and a voice radio receiver for receiving a data broadcast.
6 The voice radio receiver delivers a voice signal derived from the voice
7 broadcast to the microprocessor and separately to an amplifier which drives
8 speakers to play the voice broadcast. (Dimitriadis, col. 4, ll. 1-3, 47-48 and
9 55-58).

10 2. The travel information device additionally includes a memory
11 resource for storing indexed advertising content received through the data
12 broadcast or copied from the voice broadcast. (Dimitriadis, col. 4, ll. 24-26
13 and col. 5, ll. 1-3). The memory resource stores advertisements in data
14 structures which include fields for containing condition lists providing sets
15 of conditions indicating presentation of the associated advertising content.
16 (Dimitriadis, col. 5, l. 66 – col. 6, l. 1). “Once advertisements from voice
17 and data broadcast 22 and 26 are stored within device 40, subsequent
18 conditions or explicit commands trigger presentation thereof to the operator
19 of vehicle 10 . . .” (Dimitriadis, col. 4, ll. 26-32).

20 3. The microprocessor detects subsequent conditions which might
21 trigger presentation of an advertisement by means of a repeating control loop
22 which, once entered, repeats as a background process monitoring subsequent
23 conditions and seeking stored advertisements having matching conditions in
24 their condition lists. (Dimitriadis, col. 8, l. 64 – col. 9, l. 1). “Upon finding
25 a match between current conditions and members of any condition list 400b,

1 microprocessor *60* queues the associated [stored advertisements] for
2 presentation” (Dimitriadis, col. 9, ll. 1-5).

3 4. One command which the travel information device might
4 receive through the data broadcast is a “PRESENT” command. “PRESENT
5 command *500c* and its index parameter cause device *40* to present the
6 associated advertisement information, i.e., queue for presentation the record
7 *400* bearing the associated index.” (Dimitriadis, col. 6, ll. 54-57 and col. 8,
8 ll. 20-25).

9 5. Dimitriadis teaches that:

10
11 An advertisement presentation block *104*
12 receives from microprocessor *60* an index value
13 and has direct access to the memory resource *90*
14 for presentation of advertisements stored therein.
15 Thus, microprocessor *60* queues advertisement
16 presentation by providing a sequence of index
17 values to the advertisement presentation block *104*.
18 The advertisement presentation block, in turn,
19 accesses memory resource *90* by reference to a
20 queued index value and collects the requested
21 advertisement record *400* for presentation.
22

23 (Dimitriadis, col. 5, ll. 7-15). The Examiner has not identified a disclosure
24 in the reference sufficient to show that an advertisement is played when
25 queued.

26 6. When an advertisement is played, the advertising presentation
27 block delivers stored audio advertising content to the amplifier which drives
28 the speakers. (Dimitriadis, col. 5, ll. 19-24). The Examiner has not
29 identified a disclosure in the reference sufficient to show that the advertising

1 presentation block communicates with the amplifier through the input
2 coupled to the voice radio receiver.

3 7. Dimitriadis teaches that the system which generates the data
4 broadcast “supports group addressing whereby a single paging data packet
5 transmission may be addressed to groups of receiving devices. . . . By
6 loading into receiving devices 40 advertisements tailored to group needs, the
7 advertiser targets specific audiences with specific advertising messages.”
8 (Dimitriadis, col. 9, ll. 44-46 and 52-54).

9 8. Hite teaches systems and processes for delivering television and
10 radio advertising content targeted to individuals’ desires and needs. (Hite,
11 col. 1, ll. 7-10). One of Hite’s systems includes an individually addressable
12 digital recording device at the site where the advertising content is to be
13 delivered. The recording device stores predetermined consumer
14 identification codes [“CID codes”] chosen for the consumer. (Hite, col. 6, l.
15 60 – col. 7, l. 3).

16 9. The system receives advertisements with attached CID codes
17 and codes indicating conditions and rules required to play each
18 advertisement. These conditions and rules may include a condition or rule
19 regarding the day-part required to play an advertisement. The system stores
20 in the recording device advertisements selected by comparing the CID code
21 attached to each received advertisement with the predetermined CID codes
22 previously stored in the recording device. (Hite, col. 7, ll. 7-12).

23 10. Suitable reception equipment at the site receives a broadcast
24 including breaks or slots having unique CID codes and plays the broadcast
25 content. (Hite, col. 7, ll. 15-16 and 41-42). The broadcast includes default
26 advertisements in these slots. (Hite, col. 7, ll. 20-22). Hite suggests that the

1 unique CID codes in the broadcast be indistinguishable by ordinary means
2 so that the codes cannot be used by illegitimate electronic devices to “zap”
3 advertisements. (Hite, col. 13, ll. 47-57). This warning would have implied
4 to one of ordinary skill in the art that the unique CID codes are indicative of
5 such advertising slots and that one might use the codes to find such slots.

6 11. A “commercial processor” in Hite’s system “would look for the
7 CID in each incoming commercial at a break during a broadcast program.”
8 (Hite, col. 7, ll. 24-26). If the commercial processor detects a CID code at
9 the break and if there is a stored advertisement having codes indicating that
10 the advertisement may be played in the advertising slot, the stored
11 advertisement is accessed from the recording device and played in the slot
12 instead of the default advertisement. (Hite, col. 7, ll. 26-30).

13 14 PRINCIPLES OF LAW

15 “To anticipate a claim, a prior art reference must disclose every
16 limitation of the claimed invention, either explicitly or inherently.” *In re*
17 *Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). In determining whether
18 limitations recited in the claim are disclosed by the reference, the language
19 of the claim is to be given its “broadest reasonable interpretation consistent
20 with the specification,” construing the claim language and specification as
21 they would be understood by one of ordinary skill in the art. *In re American*
22 *Acad. of Science Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (quoting
23 *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990)).

24 A claim is unpatentable for obviousness under 35 U.S.C. § 103(a) if
25 “the differences between the subject matter sought to be patented and the
26 prior art are such that the subject matter as a whole would have been obvious

1 at the time the invention was made to a person having ordinary skill in the
2 art to which said subject matter pertains.” In *Graham v. John Deere Co.*,
3 383 U.S. 1 (1966), the Supreme Court set out factors to be considered in
4 determining whether claimed subject matter would have been obvious:

5
6 Under § 103, the scope and content of the prior art
7 are to be determined; differences between the prior
8 art and the claims at issue are to be ascertained;
9 and the level of ordinary skill in the pertinent art
10 resolved. Against this background, the
11 obviousness or nonobviousness of the subject
12 matter is determined.
13

14 *Id.*, 383 U.S. at 17.

16 ANALYSIS

17 A. *The Rejection of Claims 1-13, 16-19 and 21-25 Under Section* 18 *102(b) As Being Anticipated by Dimitriadis*

19 Independent claim 1 recites a method including the steps of
20 “monitoring the received radio broadcast stream for marker data indicative
21 of an advertising slot within the radio broadcast stream” and, “in response to
22 detecting the marker data, . . . playing the radio advertisement in the
23 advertising slot using the vehicle radio.” We agree with the Appellants
24 (App. Br. 10) that “[t]he use of marker data in the radio broadcast stream to
25 identify the location of an advertising slot is not taught or suggested by
26 Dimitriadis.”

27 The Examiner has identified only two items disclosed expressly or
28 inherently in Dimitriadis which might constitute “marker data.” The
29 Examiner finds that the “PRESENT” command constitutes “marker data”

1 within the meaning of claim 1. (Ans. 3). The Examiner also finds that the
2 detection of a condition included in an advertisement's condition list
3 constitutes "marker data." (Ans. 3). The Examiner has not identified any
4 disclosure in Dimitriadis which might suggest a relationship between the
5 timing of advertising slots, on the one hand, and either the transmission of a
6 "PRESENT" command, the occurrence of a condition of an advertisement's
7 condition list or the timing of the control loop by which the microprocessor
8 searches for conditions, on the other, sufficient to show that any of these
9 events are indicative of an advertising slot.

10 Although Dimitriadis discloses that the detection of a "PRESENT"
11 command causes an advertisement to be queued for presentation (FF 4) and
12 that the detection of a condition on the condition list of an advertisement
13 likewise causes the advertisement to be queued (FF 3), the Examiner has not
14 identified any disclosure in Dimitriadis sufficient to show that an
15 advertisement is played when queued (FF 5). Even were a "PRESENT"
16 command identifying an advertisement or a condition on an advertisement's
17 condition list indicative of a particular advertising slot, we would agree with
18 the Appellants (App. Br. 11 and 12) that the reference fails to disclose the
19 step of playing the advertisement in the indicated slot in response to the
20 detection of such a command or condition.

21 On the record before us, the Appellants have shown that the Examiner
22 erred in rejecting independent claim 1 under section 102(b). Likewise, the
23 Appellants have shown that the Examiner erred in rejecting dependent
24 claims 2-13, 16-19 and 21-25 under section 102(b).

B. The Rejection of Claims 26-41 Under Section 102(b) As Being Anticipated by Dimitriadis

Independent claim 26 recites a radio system for a vehicle including a “vehicle radio having an input for receiving audio data . . .” and a radio broadcast receiver “coupled to the input of the vehicle radio to provide the vehicle radio with the received audio content . . .” On receipt of a marker identifying an advertising slot, an advertising control unit of the radio system “is operable to access one of the stored radio advertisements, with the accessed radio advertisement being inserted into the advertising slot identified by the received marker *so that the accessed radio advertisement is included within the audio content sent to the input of the vehicle radio.*” [Emphasis added.] We agree with the Appellants (Reply Br. 4-5) that Dimitriadis’ Fig. 2 appears to be consistent with a system which sends the stored advertising content to the amplifier independently of the voice signal. The Examiner has not identified a disclosure in Dimitriadis sufficient to show that the advertising presentation block communicates with the amplifier through the input coupled to the voice radio receiver (FF 6).

On record before us, the Appellants have shown that the Examiner erred in rejecting independent claim 26 under section 102(b). Likewise, the Appellants have not shown that the Examiner erred in rejecting dependent claims 27-41 under section 102(b).

C. The Rejection of Claims 14, 15 and 20 Under Section 103(a) As Being Unpatentable Over Dimitriadis in View of Hite

Claim 14 ultimately depends from claims 1 and 4. The Appellants present no arguments suggesting that claim 14 might be patentable if claims 1 and 4 were determined to be unpatentable. (See App. Br. 10 and 19).

Claims 15 and 20 ultimately depend from claim 1. The Appellants present no arguments suggesting that claims 15 and 20 might be patentable if claim 1 were determined to be unpatentable. (*See id.*).

With respect to the Appellants' arguments regarding parent claim 1 (App. Br. 10 and 19), Hite would have suggested to one of ordinary skill in the art monitoring a received broadcast stream for marker data indicative of an advertising slot within the broadcast stream. The reference also would have suggested to one of ordinary skill in the art playing the radio advertisement in the advertising slot using the vehicle radio in response to detecting the marker data. (FF 11).

Hite does not teach expressly that the commercial processor monitors the broadcast for CID codes indicative of advertising slots. Nevertheless, one typically cannot patent "the mere application of a known technique to a piece of prior art ready for improvement." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1740 (2007). Hite, like Dimitriadis, teaches systems and processes capable of delivering radio advertising content targeted to individuals' desires and needs. (*Compare* FF 7 *with* 8). Both Dimitriadis and Hite also teach storing targeted advertising content at the site where the content is to be delivered and inserting the targeted advertising into a broadcast. (*Compare* FF 1 *with* FF 9).

Hite teaches inserting marker data, that is, a unique CID code, into the broadcast in each advertising slot having a default advertisement subject to replacement. (FF 10). The reference suggests that these unique CID codes can be used to find advertising slots. (*Id.*). The reference teaches that a commercial processor looks for the CID code in each incoming advertisement at a break during a broadcast program. (FF 11). These

1 teachings and suggestions would have provided one of ordinary skill in the
2 art reason to modify Dimitriadis' voice broadcast to include unique CID
3 codes inserted in advertising slots; to modify the programming of
4 Dimitriadis' microprocessor to look for such CID codes in the voice
5 broadcast; and to additionally modify the programming of Dimitriadis'
6 microprocessor to access an advertisement from memory and play the
7 advertisement in the advertising slot identified by the unique CID code in
8 response to detection of that CID code in the voice broadcast.

9 Such modifications would have been within the level of ordinary skill
10 in the art as evidence by the disclosures of Dimitriadis and Hite. *See*
11 *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (Prior art
12 references relied on by the Examiner may serve as evidence of the level of
13 ordinary skill in the art). One of ordinary skill in the art could have
14 predicted that modifying the programming of Dimitriadis' microprocessor to
15 monitor a received voice broadcast for CID codes indicative of advertising
16 slots would permit the microprocessor to find such advertising slots to insert
17 advertisements previously selected for storage in local memory based on
18 predetermined CID codes targeting particular recipients.

19 Parent claim 4 recites that each of a plurality of radio advertisements
20 "is accompanied by advertising data associated with the received radio
21 advertisement" and that a step of "selecting certain ones of the received
22 radio advertisements" includes "selecting certain ones of the different radio
23 advertisements using the advertisement data associated with the different
24 radio advertisements." The Appellants contend that "Dimitriadis nowhere
25 discloses this claimed use of advertisement data in determining which
26 received advertisement to store" (App. Br. 14) and that the Examiner has not

1 pointed to any teachings in Hite by which this feature would have been
2 obvious (App. Br. 19). Hite teaches selecting advertisements to be stored at
3 the site by comparing CID codes transmitted with the advertisement against
4 predetermined CID codes stored at the site where the advertising content is
5 to be delivered. (FF 9).

6 On the record before us, the Appellants have not shown that the
7 Examiner erred in rejecting claims 14, 15 and 20.

8

9 *D. The Rejection of Claim 42 Under Section 103(a) As*
10 *Being Unpatentable Over Dimitriadis in View of Hite*

11 Claim 42 ultimately depends from claim 26. Parent claim 26 recites a
12 radio system for a vehicle including a “vehicle radio having an input for
13 receiving audio data . . .” and a radio broadcast receiver “coupled to the
14 input of the vehicle radio to provide the vehicle radio with the received
15 audio content . . .” On receipt of a marker identifying an advertising slot,
16 an advertising control unit of the radio system “is operable to access one of
17 the stored radio advertisements, with the accessed radio advertisement being
18 inserted into the advertising slot identified by the received marker *so that the*
19 *accessed radio advertisement is included within the audio content sent to the*
20 *input of the vehicle radio.*” [Emphasis added.] We conclude that
21 Dimitriadis does not teach or suggest these limitations for essentially the
22 reasons given in connection with the patentability of claim 26 under section
23 102(b). We have not been directed to any teaching in Hite which would
24 have provided one of ordinary skill in the art reason to modify Dimitriadis’
25 system to meet these limitations. Hite does not address expressly a vehicle
26 radio system.

On the record before us, the Appellants have shown that the Examiner erred in rejecting claim 42.

E. The Rejection of Claims 43-45 Under Section 103(a) As Being Unpatentable Over Dimitriadis in View of Hite

Independent claim 43 recites a radio broadcast system including “one or more radio broadcast transmitting facilities that provide . . . a second radio broadcast stream which includes audio content that contains intermittent advertising slots each identified by a marker contained with that broadcast stream . . .” The Appellants contend that this limitation is not suggested by Dimitriadis and Hite. (App. Br. 19). We disagree for reasons given earlier in connection with the patentability of claims 14, 15 and 20.

Independent claim 43 further recites:

storing selected ones of said advertisements on said recording device based on a comparison of primary selection data stored in said vehicle radio system with the primary selection data that is included with said advertisements, . . . wherein said primary selection data includes one or more data items associated with . . . a user of the vehicle . . .

We disagree with the Appellants’ contention (App. Br. 19-20) that this limitation is not suggested by Dimitriadis and Hite. Dimitriadis teaches targeting advertisements to groups of listeners by using group addressing and loading into storage only advertisements tailored to group needs. (FF 7). Hite teaches selecting advertisements to be stored at the site by comparing the CID codes associated with each received advertisement with

predetermined CID codes stored at the site where the advertising content is to be delivered. (FF 7-8).

Independent claim 43 also recites “selecting one of said stored advertisements based on said secondary selection data for playback via the vehicle radio” We disagree with the Appellants contention (App. Br. 19-20) that this limitation is not suggested by Dimitriadis and Hite. The present Specification identifies several examples of such secondary selection data including time of day criteria. (Spec. 12, ll. 31-32). Hite teaches including among the codes attached to an advertisement a condition or rule regarding the day-part required to play the advertisement. (FF 9).

On the record before us, the Appellants have not shown that the Examiner erred in rejecting independent claim 43 under section 103(a). Likewise, the Appellants have not shown that the Examiner erred in rejecting dependent claims 44 and 45 under section 103(a). *In re Dillon*, 919 F.2d 688, 692 (Fed. Cir. 1990) (*en banc*).

CONCLUSIONS OF LAW

On the record before us, the Appellants have shown that the Examiner erred in rejecting claims 1-13, 16-19, and 21-41 under section 102(b) as being anticipated by Dimitriadis and in rejecting claim 42 under section 103(a) as being unpatentable over Dimitriadis in view of Hite. The Appellants have not shown that the Examiner erred in rejecting claims 14, 15, 20 and 43-45 under section 103(a). Since the rationale by which we affirm the rejection of claims 14, 15, 20 and 43-45 differs from that articulated by the Examiner, we designate the grounds of the affirmance as new grounds of rejection under 37 C.F.R. § 41.50(b) (2007).

NEW GROUNDS OF REJECTION

Pursuant to 37 C.F.R. § 41.50(b), we enter the following additional new grounds of rejection:

Claim Rejection – 35 U.S.C. § 103(a)

1. The following is a quotation of 35 U.S.C. § 103(a) that forms the basis for the new ground of rejection:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-13, 16-19 and 21-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dimitriadis (U.S. Patent 5,664,948) in view of Hite (U.S. Patent 5,774,170).

3. With respect to claims 1, 3, 16 and 21-25, Dimitriadis teaches a method of delivering advertising content to a vehicle occupant using a vehicle radio including the steps of receiving a radio advertisement (FF 1); storing the radio advertisement in memory (FF 2); receiving a radio broadcast stream (FF 1); playing the radio broadcast stream using the vehicle radio (*id.*); accessing the radio advertisement from memory (FF 5); and

1 playing the radio advertisement in the advertising slot using the vehicle radio
2 (FF 7).

3 4. As discussed earlier in connection with the patentability of
4 claims 14, 15 and 20, the teachings of Dimitriadis and Hite would have
5 provided one of ordinary skill in the art at the time of the invention reason to
6 modify Dimitriadis' method to include the steps of monitoring the received
7 radio broadcast stream for marker data indicative of an advertising slot
8 within the radio broadcast stream and, in response to detecting the marker
9 data, accessing the radio advertisement from memory and playing the radio
10 advertisement in the advertising slot using the vehicle radio.

11 5. With respect to claim 2, Hite teaches receiving a radio
12 broadcast with in-line, that is, default, advertisements identified by marker
13 data, that is, unique CID codes. (FF 10). Hite further teaches substituting a
14 stored radio advertisement for the in-line advertisement. (FF 11).

15 6. With respect to claims 4-7 and 13, Hite teaches selecting
16 advertisements to be stored at the site by comparing CID codes transmitted
17 with the advertisement against predetermined CID codes stored at the site
18 where the advertising content is to be delivered. (FF 9).

19 7. With respect to claims 8-12, 18 and 19, Hite teaches selecting
20 certain ones of different radio advertisements using primary selection data
21 and storing the selected radio advertisements in the memory. Hite further
22 teaches selecting one of the stored radio advertisements using secondary
23 selection data, accessing that stored radio advertisement in response to
24 detecting the marker data and then playing the accessed radio advertisement
25 using the vehicle radio. These teachings were detailed earlier in connection
26 with the patentability of claims 43-45.

DECISION

We reverse the rejections of claims 1-13, 16-19 and 21-42. We affirm the rejection of claims 14, 15, 20 and 43-45 and designate the grounds of the affirmance as new ground of rejections. We enter new grounds of rejection against claims 1-13, 16-19 and 21-25.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) also provides that Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED-IN-PART; 37 C.F.R. § 41.50(b)

1 hh

2

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